

# **9 FAM 42.32(c)**

## **THIRD PREFERENCE-SKILLED WORKERS, PROFESSIONALS, OTHER WORKERS**

*(TL:VISA-181; 11-20-1998)*

### **(1) Entitlement to Status**

*(TL:VISA-48; 10-1-91)*

An alien shall be classifiable as an employment-based third preference immigrant under INA 203(b)(3) if the consular officer has received from INS a Petition for Immigrant Worker approved in accordance with INA 204 to accord the alien such preference status, or official notification of such an approval, and the consular officer is satisfied that the alien is within the class described in INA 203(b)(3).

### **(2) Entitlement to Derivative Status**

*(TL:VISA-48; 10-1-91)*

Pursuant to INA 203(d), and whether or not named in the petition, the child or spouse of an employment-based third preference immigrant, if not otherwise entitled to an immigrant status and the immediate issuance of a visa, is entitled to a derivative status corresponding to the classification and priority date of the beneficiary of the petition.

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## **9 FAM 42.32(c) Related Statutory Provisions**

### **INA 203(b), in part**

*(TL:VISA-55; 3-13-92)*

**(3) SKILLED WORKERS, PROFESSIONALS, AND OTHER WORKERS.—**

**(A) IN GENERAL.—**Visas shall be made available, in a number not to exceed 28.6 percent of such worldwide level, plus any visas not required for the classes specified in paragraphs (1) and (2), to the following classes of aliens who are not described in paragraph (2):

**(i) SKILLED WORKERS.—**Qualified immigrants who are capable, at the time of petitioning for classification under this paragraph, of performing skilled labor (requiring at least 2 years training or experience), not of a temporary or seasonal nature, for which qualified workers are not available in the United States.

(ii) PROFESSIONALS.—Qualified immigrants who hold baccalaureate degrees and who are members of the professions.

(iii) OTHER WORKERS.—Other qualified immigrants who are capable, at the time of petitioning for classification under this paragraph, of performing unskilled labor, not of a temporary or seasonal nature, for which qualified workers are not available in the United States.

(B) LIMITATION ON OTHER WORKERS.—Not more than 10,000 of the visas made available under this paragraph in any fiscal year may be available for qualified immigrants described in subparagraph (A)(iii).

(C) LABOR CERTIFICATION REQUIRED.—An immigrant visa may not be issued to an immigrant under subparagraph (A) until the consular officer is in receipt of a determination made by the Secretary of Labor pursuant to the provisions of section 212(a)(5)(A).

(TL:VISA-48; 10-1-91)

For the provisions of INA 203(d), see 9 FAM 42.31 Related Statutory Provisions.

## **Sec. 203 of Pub. L. 105-100, in part**

(TL:VISA-181; 11-20-1998)

### **Nicaraguan Adjustment and Central Relief Act.**

#### **Sec. 203. Modification of Certain Transition Rules.**

##### *Temporary Reduction in Other Workers.—*

(1) *Beginning in the fiscal year following the fiscal year in which a visa has been made available under section 203(b)(3)(A)(iii) of the Immigration and Nationality Act for all aliens who are the beneficiary of a petition approved under section 204 of such Act as of the date of the enactment of this Act for classification under section 203(b)(3)(A)(iii) of such Act, subject to paragraph (2), visas available section 203(b)(3)(A)(iii) of that Act shall be reduced by 5,000 from the number of visas otherwise available under that section for such fiscal year.*

(2) *In no case shall the reduction under paragraph (1) for a fiscal year exceed the amount by which—*

(A) *the number computed under subsection (d)(2)(A); exceeds—*

(B) *the total of the reductions in available visas under this subsection for all previous fiscal years.*